

F1N9MATH

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

06 CR 150-07 (JSR)

5 MICHAEL MATERASSO,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 23, 2015
10:08 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 ANDREW BEATY

DANIEL TEHRANI

18 Assistant United States Attorneys

19 SEWARD & KISSEL LLP

Attorney for Defendant

20 RITA GLAVIN

BRIAN P. MALONEY

21 ALSO PRESENT: CORINE VAN DRIMMELEN, Dutch Interpreter

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1 (Case called)

2 (Hearing resumed)

3 NADIJA NEZIROVIC, resumed

4 THE COURT: Please be seated. Let me thank our
5 witness for being back here.

6 That's to be interpreted.

7 I said I want to thank our witness for being back
8 here.

9 THE WITNESS: Okay.

10 THE COURT: So, Ms. Glavin, you're first.

11 CROSS-EXAMINATION

12 BY MS. GLAVIN:

13 Q. Ms. Nezirovic, you were visiting Irma and Michael in
14 October; is that correct?

15 A. Yes.

16 Q. And at some point during that visit Irma was very angry
17 with Michael; isn't that right?

18 A. Yes. She was angry with Michael. Especially that one time
19 she was very angry.

20 Q. She was angry with him because she thought he was cheating
21 on her, right?

22 MR. BEATY: Objection, your Honor. Hearsay.

23 THE COURT: Well I think it's relevant background
24 to -- it's not being offered for its truth. It's also, I
25 believe, undisputed, not that that would erase the hearsay

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1 objection. But I don't see -- I think what you're inquiring
2 about is her understanding, the witness's understanding of why
3 Irma was mad at Michael, yes?

4 MS. GLAVIN: I can rephrase it better, I suppose.

5 THE COURT: All right.

6 BY MS. GLAVIN:

7 Q. You understood that Irma was angry with Michael because
8 Michael was cheating on her, right?

9 A. Irma was very angry with Michael. Because she went to the
10 bank and found out where Michael had spent money. And then she
11 went to the place where he had spent the money which was a spa
12 and found out he had been there with someone else. And that's
13 why she was very angry with him at the time.

14 Q. And she told you about this, correct?

15 A. As soon as she came back from the bank and the spa, when
16 she came back she told me that he had spent a lot of money
17 there and that he was with someone there.

18 Q. This was the day before you left for Holland; isn't that
19 right?

20 A. No.

21 Q. When was it?

22 A. It was a few days before I left.

23 Q. Did you know -- were you at the apartment when Irma
24 confronted Michael with those bank statements?

25 A. I was home with the baby and she went to bring Gia to

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1 school and then after that she came home from the bank.

2 Q. That was not my question. Please listen carefully to my
3 question. Okay.

4 A. Okay.

5 Q. You were at the apartment when Irma confronted Michael
6 about the bank statements, correct?

7 A. That's correct.

8 Q. She was furious; is that right?

9 A. I heard a fight going on in the bedroom when he came home
10 from work.

11 Q. She was yelling at him; is that right?

12 A. Yes.

13 Q. He didn't hit her, did he?

14 A. I did not see it. I was in the living room.

15 Q. Well she didn't tell you he hit her, did she?

16 MR. BEATY: Objection, your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: After the fight she went, took the
19 children to the playroom.

20 THE COURT: No. The question is did you see any
21 evidence or hear any evidence of physical fighting as opposed
22 to verbal fighting?

23 THE WITNESS: No. I did not see it.

24 I only heard them scream at each other in the bedroom.

25 Q. You were angry with Michael because you believe he

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1 mistreated your daughter; is that right?

2 A. I was not angry with Michael and I'm still not angry with
3 Michael. But I am worried about my daughter. I see how she
4 lives and I heard about how things are going. But now I
5 actually saw it, witnessed it firsthand.

6 Q. When you say you heard about what was happening, you heard
7 about what was happening from your daughter; is that right?

8 A. I heard them both screaming at each other.

9 Q. Has your daughter told you about bad things Michael has
10 done to her?

11 A. Not until later, until she went to the shelter. I heard
12 many things about her life with him.

13 Q. From her; is that right?

14 A. From her.

15 Q. And after Irma went to the shelter she was Skyping with you
16 and e-mailing with you; is that right?

17 A. I did not see her via Skype but she did send some pictures
18 of the children.

19 Q. So, from November 8 until now you have not Skyped with your
20 daughter?

21 A. I Skyped with her when she was back in the apartment.

22 Q. Would that be in December of 2014. Last month?

23 A. I think so.

24 Q. And you understood from your daughter, Irma, that Irma was
25 not happy with Donna Materasso, didn't you?

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1 A. I want to ask for clarification about the question. Was
2 she happy with Donna before she left to go to the shelter or
3 after?

4 Q. I'm talking about in December of 2014, last month.

5 A. Okay.

6 Q. Do you understand?

7 A. Yes.

8 Q. Irma told you she was not happy with Donna; isn't that
9 right?

10 A. I heard from her that she wasn't happy that Donna had given
11 some money but it wasn't the entire amount and the money came
12 from her job or from Michael and it wasn't the entire amount
13 for her and the children.

14 Q. Irma helped you -- withdrawn.

15 Last month Irma helped you write an e-mail to Donna;
16 isn't that right?

17 A. No. Never happened.

18 Q. You sent an e-mail to Donna on December 17 of 2014; isn't
19 that right?

20 A. I have sent her mail quite often. I don't know which mail
21 you're referring to.

22 Q. Did Irma help you write any of the e-mails you sent to
23 Donna?

24 MR. BEATY: Asked and answered, your Honor.

25 THE WITNESS: No. No.

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1 THE COURT: Hold on. Hold on.

2 What was the objection?

3 MR. BEATY: Asked and answered.

4 THE COURT: Overruled.

5 MS. GLAVIN: Repeat the answer.

6 THE WITNESS: No.

7 Q. Showing you what is Defendant's Exhibit 44. This is an
8 e-mail you sent for Donna and it's in English; is that right?

9 A. Yes.

10 MS. GLAVIN: With the assistance of the interpreter.

11 Didn't you tell Donna in this e-mail: Do you even ask
12 yourself how she is making it by in the meantime financially?
13 She has sold everything she could. Her TV, phones, and even
14 her clothes that were worth anything.

15 Didn't you say that to Donna in this e-mail?

16 MR. BEATY: Objection as to relevance, your Honor.

17 THE WITNESS: That she sold her clothes and.

18 THE COURT: Overruled.

19 THE WITNESS: Yeah. Yes.

20 MS. GLAVIN: Can we have Court Exhibit A, B, and C.

21 BY MS. GLAVIN:

22 Q. Now, on Tuesday you remember testifying for the first time
23 in this courtroom, right -- no. Was it Tuesday?

24 You've testified in this courtroom two previous days;
25 is that right?

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1 A. Yes.

2 Q. The first day that you testified you remember I was
3 questioning you and we had to stop for the day, right?

4 THE INTERPRETER: Okay. Let me rephrase.

5 THE WITNESS: So what is the question?

6 Q. Do you remember after the first --

7 THE COURT: I think that was a good response because
8 it didn't sound like a question. It sounded like a statement.

9 BY MS. GLAVIN:

10 Q. You went home after the first day you testified; is that
11 right -- withdrawn.

12 You went to Irma's apartment after the first day you
13 testified; is that right?

14 A. Yes.

15 Q. And you went to Irma's apartment and you took pictures; is
16 that right?

17 A. Yes.

18 Q. And the pictures that you took that night you sent to the
19 Child Protection Services people, correct?

20 MR. BEATY: Objection, your Honor.

21 THE COURT: You can't do that.

22 BY MS. GLAVIN:

23 Q. To Mr. Beaty; is that correct?

24 A. Yes. That is correct.

25 Q. Looking at what is Court Exhibit B. That's the photo you

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1 took, right?

2 MR. BEATY: Objection, your Honor, as beyond the scope
3 of this examination.

4 THE COURT: I'm going to give some leeway here.

5 THE WITNESS: Yes. The photo I took.

6 Q. You see a TV in the mirror; is that correct?

7 A. The television is next to the mirror.

8 Q. And Court Exhibit C, that's the photo you took and sent to
9 Mr. Beaty; is that right?

10 A. Yes. Because I didn't understand -- I took the pictures
11 because the map of the apartment was not clear to me and to get
12 a better understanding I took the pictures so -- to show you
13 where I was and what I could see from where I was.

14 Q. Let me ask the question again. Court Exhibit No. C is a
15 picture you took and sent to Andrew Beaty, yes or no?

16 A. I only know those two people and he was the one I sent it
17 to and he was the only one.

18 Q. So you took the picture, Court Exhibit C, you took that
19 picture? Yes?

20 A. You don't have to scream at me. There's so much going on
21 with my daughter, the children. Please don't scream at me.

22 THE COURT: Well I agree with that. I think,
23 Ms. Glavin, you've got to lower the temperature a little.
24 However, the -- just so that I'm clear Ms. Nezirovic, did
25 you -- were you the one who took that picture, that photograph?

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1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 BY MS. GLAVIN:

4 Q. And you took the photograph this week, right?

5 A. Yes. The evening after I was here. When I saw the
6 apartment, the map and I don't know if it was the first or
7 second day.

8 Q. Looking at Court Exhibit C, can you point out to us where
9 the TV is. Point out where the TV is?

10 A. You're screaming at me so I don't want to answer. I'm here
11 to explain what I have seen and done and so you don't have to
12 scream at me.

13 THE COURT: I have to agree with the witness,
14 Ms. Glavin, that you need to lower the temperature.

15 BY MS. GLAVIN:

16 Q. Please point out --

17 THE COURT: Excuse me now. The question, however, is
18 would you point out where the TV is.

19 THE WITNESS: The TV is here.

20 THE COURT: Indicating towards the far left of the
21 photo beside the bookcase.

22 THE WITNESS: The television is here. Here is the
23 corner and here is the TV.

24 Q. And you can see the reflection of the TV in the window; is
25 that right?

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1 A. Yes.

2 MS. GLAVIN: I have no further questions, your Honor.

3 THE COURT: All right.

4 MR. BEATY: Brief redirect, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BEATY:

7 Q. Ms. Nezirovic do you see Defendant's Exhibit 44 in front of
8 you? Do you still have that in front of you?

9 Is it your understanding that that e-mail was written
10 by your son, Damir?

11 MS. GLAVIN: Objection.

12 THE COURT: Ground.

13 MS. GLAVIN: I'm still thinking of that.

14 THE COURT: Pardon.

15 MS. GLAVIN: I'm still thinking. Foundation.

16 THE COURT: That won't do it. Leading would do it.

17 MS. GLAVIN: Leading.

18 THE COURT: Sustained.

19 BY MR. BEATY:

20 Q. Ms. Nezirovic do you remember testifying on direct
21 examination that you wrote that e-mail with the help of your
22 son, Damir?

23 MS. GLAVIN: Same objection.

24 THE WITNESS: Yes.

25 THE COURT: No. I'll allow that as foundational to

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1 the question you're hopefully about to put.

2 Q. Did Irma help you write that e-mail?

3 A. She never helped me to compose any e-mails. I am not
4 crazy. I'm not -- I can read and write. And she never helped
5 me. And I know exactly all -- the content of the e-mails that
6 I sent to Donna.

7 THE COURT: I have a few questions. Forgive me,
8 counsel.

9 So my recollection, correct me if I have this wrong,
10 is you prepared this e-mail but your English wasn't good enough
11 and so you asked your son to translate it and put it into
12 better English. Do I have that right?

13 THE WITNESS: Yes.

14 THE COURT: And do you know whether your son was in
15 communication with Irma during that process.

16 THE WITNESS: Can I explain how we have -- how we have
17 composed this e-mail?

18 THE COURT: Of course.

19 THE WITNESS: My son called me very early in the
20 morning or in the middle of the night. It was about 3:30 a.m.
21 or 4 o'clock. I was still in bed. And he told me that Irma
22 had called him to ask to speak to Ms. Donna to talk about her
23 situation. I told him that he could not bother Donna, that it
24 is not your business. I told him I will send -- try to make an
25 e-mail and -- or send a message was the literal words -- send a

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1 message to Donna because I knew what Irma needed to speak to --
2 my son told me what Irma needed to speak to Donna about.

3 I told him can you make a message and I did not go
4 downstairs yet. It was cold and I had a headache. And on my
5 telephone -- through my telephone I told him what the content
6 of the message should be. And he wrote everything down.

7 I went downstairs later and I got on the computer and
8 there I saw there was a message from Irma and I was surprised
9 that I wanted to -- that I received a message from Irma.

10 And then I checked through Google Translate what the
11 message said. Everything was correct that I told my son he
12 should write a message to Donna. So I did make a copy of the
13 text and I sent it to Donna.

14 THE COURT: So I'm a little unclear about one thing.
15 The message you got from Irma was about -- was her telling you
16 her ideas for the message you should send to Donna?

17 THE WITNESS: I told my son that he should make a
18 message for Donna. And the message should be sent from me. On
19 behalf of me.

20 THE COURT: I thought -- I'm sorry. Go ahead. I
21 thought you just said -- maybe I misunderstood -- that before
22 that was finished you received a message, was it from Irma?

23 THE WITNESS: I just received a message from Irma with
24 the content, without text from her.

25 THE COURT: I don't understand that. Explain it

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1 again.

2 THE WITNESS: When I was at the computer I saw the
3 message from Irma.

4 THE COURT: What was the message from Irma?

5 THE WITNESS: That this was the message.

6 THE COURT: Wait a minute. You're looking at Exhibit
7 44, right?

8 THE WITNESS: Yes.

9 THE COURT: And that's a message from you to Donna, is
10 it not?

11 THE WITNESS: Yes. Later I heard from my son and I
12 asked him why did you send it to Irma? I wanted to send it to
13 Donna.

14 THE COURT: So your son sent it to Irma?

15 THE WITNESS: Yes. He sent it to Irma because to keep
16 her quiet. She was starting to panic because the electricity
17 was going to cut off and she couldn't live in a dark apartment.

18 THE COURT: So then what did she send to you? What
19 did Irma send to you?

20 THE WITNESS: Just the message she received from my
21 son.

22 THE COURT: Why would she send that to you?

23 THE WITNESS: The contents of the message was for me
24 not for her.

25 All the messages I sent to Donna I also sent to Irma

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1 because I wanted to keep her from panicking, to keep her quiet,
2 and because she had been in a fight with Donna.

3 THE COURT: Did Irma have access to using your e-mail?

4 THE WITNESS: No.

5 THE COURT: So, you have just the one e-mail address,
6 one e-mail that you use which is N dot Nadija at Gmail dot com?

7 THE WITNESS: Yes.

8 THE COURT: Let me show you page two of Exhibit 45 and
9 look at the -- the interpreter, if necessary, can help you with
10 the translation. But I'm really only interested in the first
11 few lines of that page.

12 THE INTERPRETER: I did the first five, six lines.

13 THE COURT: My question first is so this is an e-mail
14 you also sent to Donna on December 17, 2014, yes?

15 THE WITNESS: If that's what it says then, yes that's
16 correct.

17 THE COURT: You're familiar with the fact that when
18 you send or receive an e-mail the time is stamped, yes?

19 THE WITNESS: Yes.

20 THE COURT: So -- are you familiar on your own Gmail
21 as to the -- how the time appears, what the format is?

22 THE WITNESS: Yes.

23 THE COURT: So if you look at the top here it says
24 2014-12-17. That means December 17, 2014, yes?

25 THE WITNESS: Yes.

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1 THE COURT: Correct?

2 THE WITNESS: Yes.

3 THE COURT: Then it says 9:34 GMT plus 01:00. That
4 means that it's 9:34 Holland time because Holland time is one
5 hour different from English time?

6 THE WITNESS: At night, one?

7 THE COURT: So GMT -- do you know whether GMT stands
8 for Greenwich Mean Time which is the time in Greenwich,
9 England?

10 THE WITNESS: It's 1 o'clock in the morning?

11 THE INTERPRETER: Am I allowed to explain?

12 THE COURT: Let me try. You see the 9:34?

13 THE WITNESS: Yes.

14 THE COURT: So that's the time in the Netherlands when
15 you sent the e-mail according to this.

16 Do you understand?

17 THE WITNESS: Yes. If that's what it says that's
18 correct.

19 THE COURT: But are you familiar that on your own
20 e-mail that there's this notation? Have you seen this kind of
21 notation on your own e-mails?

22 THE WITNESS: Yes.

23 THE COURT: Are you familiar with the fact that when
24 it is 9 o'clock in the Netherlands it's 8 o'clock in England?

25 THE WITNESS: The time goes back? Or forward?

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1 THE COURT: I'm sorry.

2 THE WITNESS: The time goes back an hour? Or it goes
3 forward?

4 THE COURT: Because the time is, in the Netherlands,
5 is one hour earlier than the time in England. If you know.
6 I'm just asking if you're familiar with that.

7 THE WITNESS: No.

8 THE COURT: Okay. Do you remember sending this
9 e-mail, the one on page two of Exhibit 45?

10 THE WITNESS: Yes. Very well.

11 THE COURT: And turn to first page of the exhibit.
12 There's an e-mail also sent on December 17, also sent from you
13 to Donna, yes?

14 THE WITNESS: Yes.

15 THE COURT: And do you recollect that's another e-mail
16 you sent?

17 THE WITNESS: Yes. Irma had told me that Michael will
18 get out of jail with some bail money.

19 THE COURT: Now these e-mails, the two that we were
20 just looking at, you wrote but used Google Translate to turn
21 them into English; is that right?

22 THE WITNESS: Yes.

23 THE COURT: All of these e-mails were because you did
24 not want Michael to get out of jail, yes?

25 THE WITNESS: Irma was afraid of him and so when he

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1 gets out of jail again she was again afraid. And I also was
2 worried because I am afraid he can be dangerous.

3 THE COURT: So throughout the morning and into later
4 in the day on December 17 you were receiving constant updates
5 from Irma as to what was going on; is that fair?

6 THE WITNESS: I -- we called each other a lot. We
7 constantly were on the phone, during the day, in the middle of
8 the night. She was very emotional and upset. And I just
9 wanted to speak to her.

10 THE COURT: Then let me ask you one last time, because
11 we've sort of been over this but I just want to be absolutely
12 clear. With respect to Exhibit 65.

13 THE INTERPRETER: 45, your Honor.

14 MR. BEATY: Your Honor, I don't believe that exhibit
15 has been shown to the witness.

16 THE COURT: What is the one down there?

17 THE INTERPRETER: 44.

18 THE COURT: Well let me show you 65.

19 So that's the e-mail from Irma to you with the very
20 same language of your e-mail in Exhibit 44 to Donna.

21 THE WITNESS: Yes.

22 THE COURT: And every indication is that that was sent
23 to you, and I think you also testified, sent to you by Irma
24 before you sent the very same e-mail to Donna, true?

25 THE WITNESS: No. But when Irma sent this to me I

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1 checked it through Google Translate. And once I checked it,
2 I -- my son had written it, and then I sent it to Donna.

3 THE COURT: Right. So do you have any understanding
4 why your daughter Irma was sending you the text of the e-mail
5 you were going to shortly thereafter send to Donna?

6 THE WITNESS: I did not understand why my son sent the
7 e-mail to Irma instead of Donna and the e-mail should have gone
8 to Donna directly, not to Irma. Later when I spoke to my son
9 he told me why he had sent the e-mail to Irma, because he
10 wanted her to quiet down and not be so panicked at the time.

11 THE COURT: Right. But why is she sending it back to
12 you?

13 THE WITNESS: Because it wasn't for her. The mail was
14 not meant for her. The mail was meant for Donna and she sent
15 it back to me. She wanted me to know.

16 THE COURT: To know what?

17 THE WITNESS: We always sent -- I always sent the
18 mails also to Irma so she knew that I was in contact with
19 Donna.

20 THE COURT: Were you talking with her on the phone at
21 the same time this was going on involving these various
22 exchanges of e-mails that we've been looking at?

23 THE WITNESS: Irma and I talked a lot over the phone.
24 And we talked about the fact that she had trouble paying for
25 school for Gia, and for her electricity, and for television and

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1 that's why -- television I think meaning cable -- and that's
2 why we spoke a lot. And we did not speak about -- always speak
3 about my contact with Donna and what I said to her in the
4 mails. That's why I asked Donna to get some financial support
5 from them because I cannot pay for everything for Irma.

6 THE COURT: This e-mail exchange that you had with
7 Donna and that your son drafted, this was very early in the
8 morning I think you said.

9 THE WITNESS: Yes. I slept very poorly the entire
10 time, the entire two months. And my mobile telephone is always
11 next to my bed.

12 THE COURT: So when Donna -- excuse me. When Irma
13 sent you the e-mail back to you that she had received from your
14 son -- let me rephrase this question.

15 When Irma sent you the e-mail with the very same text
16 that you were then going to send to Donna, wasn't it your
17 understanding that she was saying that she approved the sending
18 of that e-mail?

19 THE WITNESS: I think that Irma sent me the message
20 because she understood that the mail was supposed to be sent to
21 Donna and not to her. So she always got e-mails from me but
22 never from my son.

23 THE COURT: Are you saying she sent it to you to show
24 you what she had received from her son?

25 THE WITNESS: I just made a copy and sent it to

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1 Ms. Donna and I don't recall.

2 All the mails that I have sent to Donna I also sent to
3 Irma because I wanted Irma to know that Donna was not angry
4 with her and I wanted them to have a good relationship and not
5 fight over anything, so --

6 THE COURT: That's not really what I was asking about.
7 But all right. Counsel, go ahead.

8 MR. BEATY: One moment, please, your Honor.

9 (Pause)

10 No further questions, your Honor.

11 THE COURT: All right. Anything else?

12 MS. GLAVIN: No, your Honor.

13 THE COURT: Thank you so much. You may step down.

14 (Witness excused)

15 THE COURT: My understanding is that counsel decided
16 late yesterday that they would prefer to give oral summations
17 today rather than written summations; is that correct?

18 MR. BEATY: That's correct, your Honor.

19 THE COURT: All right.

20 MS. GLAVIN: That's correct, your Honor.

21 THE COURT: So, is the government ready to go or shall
22 we -- do you want a short break since there was a little extra
23 testimony?

24 MR. BEATY: Short break would be appreciated.

25 THE COURT: So we'll take a ten-minute break.

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1 How long roughly are you going to be on your
2 summation?

3 MR. BEATY: No more than 20 minutes.

4 THE COURT: Okay.

5 (Recess)

6 MR. BEATY: May it please the Court, the government
7 has demonstrated by a preponderance of the evidence that
8 Michael Materasso unlawfully restrained his wife in violation
9 of New York law.

10 This case is ultimately about whether you believe
11 Nadija Nezirovic or Michael Materasso. This case is not about
12 Irma. It's not about ACS. It's not about a wide-ranging
13 conspiracy. It's about whether you believe the testimony of
14 Ms. Nezirovic, a 61-year-old former social worker, about what
15 she observed on November 5.

16 Now the specification at issue charges the defendant
17 with unlawful imprisonment. To prove a violation of that under
18 New York Penal Law Section 135.05 the government must establish
19 simply that the defendant restrained another person. The
20 statute defines restrain to mean to restrict a person's
21 movement intentionally and unlawfully in such a manner as to
22 interfere substantially with his liberty by confining him
23 without consent and with knowledge that the restriction is
24 unlawful. A person is so confined without consent when it's
25 accomplished by physical force, intimidation or deception.

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Summation - Mr. Beaty

1 The evidence in the record demonstrates that the
2 defendant did so by tying up Irma Materasso nearly naked to a
3 chair. Ms. Nezirovic testified that she was woken up on the
4 morning of November 5 by the sounds of the defendant's voice in
5 the living room. She admits that she didn't understand what he
6 was saying. But he was talking loudly. It was early in the
7 morning before the sun came up. She left her bedroom and in
8 the living room she saw her daughter topless, seated on her
9 chair, with her arms behind her back. The defendant was
10 standing next to the chair fully clothed. After Ms. Nezirovic
11 asked what was going on, Mr. Materasso looked at her very
12 angrily and then leaned down to untie a rope. And it was at
13 that moment when Ms. Nezirovic realized that her daughter's
14 hands were, in fact, tied behind her back. Then the defendant
15 got his coat from the closet and left the apartment.

16 You could tell by Ms. Nezirovic's demeanor that she
17 was telling the truth. It was clearly painful for her to talk
18 about. When your Honor was asking her detailed questions about
19 the event that morning she got a little emotional.

20 You can tell she was telling the truth by the details
21 she remembered as well as the things that she frankly admitted
22 she didn't know or can't remember. She remembers what Irma was
23 wearing and what she wasn't wearing. She remembers what she
24 and Irma did next. But she candidly admitted that she doesn't
25 know certain details like what kind of rope Irma's hands were

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Summation - Mr. Beaty

1 tied with.

2 And her testimony is corroborated in small ways that
3 she couldn't have known would come into evidence. She
4 testified that Irma and Michael had argued about bank
5 statements about a spa. She said that argument took place in
6 the bedroom. The defendant said the same thing on the stand.

7 Ms. Nezirovic testified that the defendant came home
8 late one night and tried to get in but that Irma wouldn't let
9 him in. Instead, Irma blockaded the door with chairs and with
10 the children's stroller. The defendant testified that he came
11 home late that night after being out with friends and he got
12 locked out.

13 As Ms. Nezirovic testified the next day the defendant
14 didn't go to work. Instead, she says he spent the next several
15 days sleeping late at the apartment. She didn't say she knew
16 why the defendant was sleeping. The government's theory about
17 why he was sleeping is he was crashing after going on a meth
18 binge. But the testimony that he was home and not working
19 those days is corroborated by Probation Officer Olivares who
20 testified about the absence of paystubs. And it's corroborated
21 by the defendant himself who told you that he didn't go to work
22 those days.

23 Ms. Nezirovic's testimony is corroborated about the
24 February 2013 incident. She told the Court that she went back
25 to Irma and Michael's house after walking the dog. And she saw

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Summation - Mr. Beaty

1 a scene of Michael standing over Irma while Irma cried on the
2 couch. The window was completely broken and there was glass
3 all over the couch and the floor. She didn't know that Donna
4 Materasso was going to corroborate that. She didn't know that
5 Michael Materasso was going to admit it. And, in fact, she
6 didn't even tell you that she saw the defendant do anything.
7 She just told you what she observed when she got back from
8 walking the dog.

9 But then Donna Materasso did get on the stand and
10 corroborate that that incident happened. And the defendant did
11 admit that he kicked a plastic chair through the window. And
12 importantly her testimony is corroborated by the fact that Irma
13 took her daughters and left the apartment that day to go to a
14 domestic violence shelter.

15 If Irma simply wanted to get away from Michael she
16 could have gone to stay with Michael's parents, stay with a
17 friend, or even in a hotel. She didn't. Instead, she packed
18 up all their things and went to stay in a shelter for six days.

19 Think about all of the things that Ms. Nezirovic could
20 have embellished to make her testimony more dramatic. But she
21 didn't. For one, why would this be the story she chose to make
22 up? Why not make it more compelling? More abusive? More
23 violent? She just told you what she saw.

24 And even with this incident she didn't tell you that
25 as soon as Michael left she spent hours consoling Irma and then

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Summation - Mr. Beaty

1 immediately took her to a shelter. She told you what happened.
2 That Irma was distraught and Irma went back to her bedroom to
3 see Gia. Irma stayed there a while. Ms. Nezirovic had a cup
4 of coffee. The two of them later took Jack the Pit Bull to a
5 groomer. This is not an embellished story, your Honor.

6 There was a lot of testimony about Ms. Nezirovic's
7 understanding of floor plans and placement of hatches. This is
8 a nonissue. It's not in dispute that Ms. Nezirovic knows the
9 layout of the apartment or that she was actually staying there
10 that night. In fact she's staying at that apartment right now.

11 The question is not whether she had a good view of
12 what happened the morning of November 5 or whether she could
13 see it from the right angle. The question is whether you
14 believe it happened at all.

15 The only evidence in the record that this didn't
16 happen is Michael Materasso's testimony. This is a man who has
17 violated the Court's orders on four different occasions. He's
18 admitted to lying to his probation officer on numerous
19 occasions, essentially lying to the Court. And, in fact, he
20 did lie to the Court. He got on the stand and he lied.

21 He was asked specific questions about doing drugs, the
22 timeframe, where it might have happened, the type of drug. I
23 submit you don't simply forget using cocaine at a specific
24 event, at a friend's wedding, just over a week after getting
25 out of prison. And he only admitted that he lied to the Court

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Summation - Mr. Beaty

1 after he was confronted with the evidence.

2 This is what the defendant does. He denies what he
3 cannot admit and admits what he cannot deny. He claims that he
4 didn't do drugs at any other time during his supervised release
5 other than the two times he initially admitted and then the
6 third time he was forced to admit. But I submit you can't
7 credit that testimony either.

8 In addition to the admitted drug use, the defendant's
9 drug testing record, Government Exhibit 5, is perfectly
10 consistent with someone who is using drugs and trying to skip
11 out on drug tests when he knows that he'll test positive. He
12 failed to show up for a random drug test on October 2. He
13 claims now on the stand that Mr. Olivares told him there was no
14 drug testing that day. But Olivares didn't testify to that.
15 And the drug test history indicates a missed test. And he
16 didn't have a make-up test until five days later. That test
17 was negative. The defendant rescheduled a test on October 27.
18 And then when he was tested three days later the sample was
19 diluted. Mr. Olivares testified that people dilute their urine
20 in order to test negative.

21 The defendant has previously relied on a defense
22 before your Honor that his threatening behavior was a product
23 of his drug use. Given his admitted drug use and the strong
24 implication that he was using throughout this term of
25 supervised release, I submit that the drug use helps explain

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Summation - Mr. Beaty

1 the many arguments that Ms. Nezirovic says she observed and it
2 helps explain Irma's fear of him which her mother observed when
3 she saw Irma blockading the door to their apartment. It helps
4 explain the days the defendant spends sleeping in after not
5 having come home for a few days.

6 The defense's theory is that the defendant is the
7 victim of an international conspiracy to kidnap children,
8 obstruct justice, and commit perjury. The defense is arguing
9 that Ms. Nezirovic is lying on behalf of her daughter, but
10 there is no evidence to back that up. She has no motive to
11 lie, to travel from the Netherlands to the United States in
12 order to commit perjury. If Irma and her mother simply wanted
13 to spirit the children away --

14 THE COURT: I need to interrupt on just that point
15 because I -- something that's not in evidence but I think I can
16 fairly ask it, and I should have asked it before you began.

17 How did it come about that Nadija was a witness here?
18 That is to say, did the government reach out to her? Did her
19 daughter reach out to her? Who was the immediate agent, so to
20 speak?

21 MR. BEATY: On the first meeting that the government
22 had with Irma, she stated her mother would be returning to the
23 U.S. in early January. At that point the government asked Irma
24 to reach out to her mother to let her know that we'd like to
25 speak with her when she was here.

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Summation - Mr. Beaty

1 THE COURT: Okay. Very good. Sorry to interrupt.

2 MR. BEATY: Not at all, your Honor.

3 If Irma and her mother simply wanted to take the
4 children away to the Netherlands Irma could simply have left.
5 Her mother doesn't have to come back to the U.S. for her to do
6 that. Her mother doesn't have to testify here for her to do
7 that. Irma has had passports for the kids for almost two
8 months. She could just go. Michael Materasso is in jail for
9 drug use. It doesn't matter whether this specification is
10 proved up. He'll still be in jail. Ms. Nezirovic did not need
11 to come to testify to keep him in jail, to the extent that
12 that's even necessary for this sort of fantastical conspiracy
13 to work. Irma hasn't left and her mother did come here. She
14 took the stand. And she told you what she saw.

15 The defense also suggests that perhaps Ms. Nezirovic
16 is testifying vindictively because her son-in-law cheated on
17 her daughter. This, too, isn't supported by the evidence. She
18 testified that she's not angry at Michael Materasso. She's
19 simply worried about her daughter. And the defendant testified
20 that he's cheated on Irma a number of times. And why now?
21 This isn't the first time that she -- that Ms. Nezirovic has
22 heard about Michael's infidelity. This isn't the first time
23 she observed Michael's abusive behavior.

24 Irma has largely been a single mother of two girls
25 while the defendant has been in prison. So why all of a

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Summation - Mr. Beaty

1 sudden, at this point in 2014 has Ms. Nezirovic decided to
2 become a criminal and perjure herself? It doesn't make any
3 sense.

4 Again, it doesn't make sense that Ms. Nezirovic would
5 invent this particular story. It's not violent. It doesn't
6 involve threats. It doesn't involve any abuse of the
7 daughters. She could have come up with anything in the world.
8 But instead she admitted a number of times that she had never
9 seen the defendant hit Irma. She simply says she saw this
10 strange but shocking and embarrassing tying-up-naked incident.

11 If Ms. Nezirovic is making up the whole story and
12 rehearsed it with Irma in advance, why not embellish a little?
13 And why not fix the holes? She could have testified that Jack
14 was barking. Or correctly described where the dining room
15 table is located.

16 Ultimately, your Honor, this case comes down to
17 credibility of witnesses. I submit to you that Nadija
18 Nezirovic's testimony was more credible than the defendant's.
19 You know that the defendant lied to you about drugs. There is
20 no reason to think that he isn't also lying about November 5.

21 The defense has not delivered on any evidence that
22 Ms. Nezirovic is conspiring with Irma to kidnap the children by
23 lying on the stand.

24 In sum, the evidence has demonstrated by a
25 preponderance of the evidence that the defendant unlawfully

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Summation - Mr. Beaty

1 restrained Irma Materasso on November 5, 2014.

2 THE COURT: Thank you very much.

3 I'll hear now from defense counsel.

4 MS. GLAVIN: Your Honor, Mr. Materasso's parents,
5 Donna and Michael, Sr. are outside and they asked me if they
6 could be present for the summation.

7 THE COURT: Sure.

8 MS. GLAVIN: Your Honor, I just want to start with the
9 premise that even if you were to credit Nadija's testimony, it
10 doesn't meet the preponderance of the evidence standard for
11 unlawful imprisonment under New York law. Just starting with
12 that premise. Because her testimony alone, there is no
13 evidence that the tying up that she says happened or
14 restraining was unlawful or without anybody's consent. So it's
15 not -- even at the end of the government's case, which is why
16 we move for directed verdict, we don't think it meets every
17 element by a preponderance of the evidence.

18 But even if your Honor says okay, if I just heard from
19 Nadija, that's enough. I want to hit the arguments that I
20 think -- that I know you know are coming.

21 This case started, as you know, much broader. When
22 your Honor signed the warrant for Mr. Materasso's arrest there
23 were four specifications. Signed it on November 12.
24 Mr. Materasso turned himself in to state custody. He was in
25 state custody for a little more than a month.

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Summation - Ms. Glavin

1 December 16 was the first day he appeared in this
2 courthouse. The D.A.'s Office let him out so that he could
3 come and face your Honor.

4 Mr. Materasso appeared before a magistrate judge. The
5 magistrate judge, if your Honor recalls, granted him bail. We
6 had a telephone conference that evening on the 16th. Your
7 Honor granted the government's stay until we could meet before
8 the Court on the 18th. The 18th was the first time
9 Mr. Materasso has seen you again since the last time.

10 When we were here on the 18th I think there were two
11 important things that happened. First and foremost, he pled
12 guilty immediately to specification No. 4. No hesitation. No
13 ask for a continuance. I am guilty. He didn't plead to 1 to
14 3. And there was a reason for that and that's because he
15 didn't do it.

16 So he pleads guilty immediately, right off the bat.
17 The second thing that happens that day, which is pretty
18 important, is if we had any doubt about it, we learned that
19 Irma Materasso is not a shrinking violet. Because your Honor
20 had a letter that he had to put on the record that day,
21 December 4 letter that Irma Materasso sent to Probation Officer
22 Olivares, which was then forwarded to the Court and put as part
23 of the record. And in that letter Mrs. Materasso told the
24 Court, told all of us, that: I left Michael on November 5,
25 went to a DV is shelter with my daughters. The night before he

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Summation - Ms. Glavin

1 tied me up naked to a chair and did a cavity search on me
2 because he believed I was hiding his bag of drugs. He was up
3 for five days. He got extremely paranoid and still went to
4 work like that. He's lucky he didn't kill some innocent labor
5 worker while operating a heavy machine, while being up for five
6 days on crystal meth.

7 Irma Materasso was pretty angry. And Irma Materasso
8 didn't want Michael out of the state system. And then when we
9 got to this courtroom she didn't want him out of here. She got
10 her whole family involved. She was getting her family involved
11 before then. So, what happens next as this case proceeds along
12 the docket?

13 As your Honor knows, the defense began issuing a lot
14 of subpoenas. The government hadn't spoken to Nadija Nezirovic
15 until within the last couple weeks is the first time. They had
16 spoken with Irma. And Irma had already locked herself into a
17 story because her story is in a written police report in a
18 statement that she signed. Her story formed the basis --

19 MR. BEATY: Objection, your Honor. None of this is in
20 evidence.

21 THE COURT: Well to the extent what is implicitly
22 being asked is that the Court take judicial notice of other
23 proceedings, that part is unexceptionable.

24 The question of whether I can take judicial notice of
25 what of a statement that was made by Irma in another court

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Summation - Ms. Glavin

1 seems to me a much closer question. I will allow it for now
2 but -- but I would also point out the obvious. Both sides
3 chose not to call Irma. At an absolute minimum that suggests
4 that neither side felt that her evidence or her admissions or
5 whatever either side might have gained from her taking the
6 stand outweigh the negatives of calling her, the strategic
7 negatives.

8 So, if the government had felt that the benefits of
9 her firsthand knowledge outweighed the baggage that she
10 obviously brings, they could, if they chose, have called her.
11 They could have all sorts of strategic motives for not calling
12 her, the most obvious being that they had a witness who they
13 thought was credible and didn't have any of this baggage who
14 they decided to call.

15 The defense had similar dilemmas, if you will. They
16 could have called her and spent, I'm sure, hours bringing out
17 all the baggage as well as the possible inconsistencies of the
18 sort of thing that counsel is now alluding to. But they felt
19 that that was outweighed by whatever benefits the government
20 would obtain from having the defense call her to the stand, or
21 whatever. I don't -- it's not for me to speculate.

22 MS. GLAVIN: There's another possibility too.

23 THE COURT: But the point is this. Putting aside the
24 technical question of whether I can take judicial notice of
25 what you're now getting into, I don't think either side -- and

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Summation - Ms. Glavin

1 this goes to both sides -- can have their penny and their cake.
2 If you didn't call her, then what does it matter whether she
3 gave inconsistent testimony in another court or not?

4 MS. GLAVIN: It's that, your Honor, she didn't mention
5 anything -- if this scene happened as Nadija described it on
6 the morning of the 5th.

7 THE COURT: If you're saying I should take notice of
8 what she said so that I can -- because it contradicts what her
9 mother said, that would be totally impermissible since you
10 didn't call her.

11 MS. GLAVIN: Right.

12 THE COURT: So I'm still missing now what you're
13 getting at.

14 MS. GLAVIN: What I'm getting at is negative. If
15 Nadija Nezirovic had actually witnessed this happening, Irma
16 Materasso has a big mouth. She didn't have any problem writing
17 you, going off, calling him a psychopath. Irma Materasso
18 through this incident doesn't talk to her mother. Her mother
19 says that she comes out of that bedroom and she -- she did
20 change her story overnight. As your Honor specifically asked
21 her on day one of her testimony: When you came out were you
22 looking straight ahead and see this or did you have to turn and
23 look to your right? And she told you unequivocally straight
24 ahead. That was the last question for the day.

25 THE COURT: I understand the arguments about that but

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Summation - Ms. Glavin

1 I don't see what that has to do with the immediate question,
2 which is what Irma said in a statement entered in state court
3 that was not part of the evidence in this case that you now
4 want me to in effect take judicial notice of.

5 MS. GLAVIN: Simply the fact that Irma Materasso, her
6 not being a shrinking violet, shows that what Nadija Nezirovic
7 is describing happened on the morning of the 5th, she looks
8 to her daughter and says, you know, what's going on, or what's
9 the matter, and her daughter doesn't say anything? Her
10 daughter is not yelling? She's being tied up naked against her
11 will and being restrained?

12 THE COURT: So the argument -- now I understand the
13 argument. The argument is not what she said in that statement
14 but the fact that she's happy to describe this incident to the
15 world, specifically to the probation officer, to the state, but
16 at the time of the incident she doesn't tell her mother about
17 it. I think that is an argument that can be made regardless
18 of -- I don't think that requires me to take judicial notice of
19 what was in the statement but just of the fact that she filed a
20 charge. So I will, to that limited extent, permit the
21 argument.

22 MS. GLAVIN: That's an important point here, your
23 Honor. Because, number one, Irma Materasso, when we started
24 this, you saw the motion practice. It was pretty spirited.
25 And the case became narrower, narrower, and narrower, to where

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Summation - Ms. Glavin

1 the government had no case because they only -- if they didn't
2 call Nadija. And when did they become aware and start figuring
3 this out about Nadija, I don't know. But for the very first
4 time after we briefed -- did briefing before your Honor, it was
5 January 14, two days later, after we submitted exhibits,
6 extensive exhibits, that the government says we've decided it's
7 in the interests of the family not to call her. In the
8 interests of the family, that's why we're not calling her.
9 They suddenly came to that conclusion. And it's in their
10 letter on the 14th. I would urge you to read it carefully.
11 I think I read it about six times. But no admission that we're
12 not calling her because of her baggage. That says something.

13 So as we come into this hearing, your Honor, a couple
14 of I think sort of larger points. Number one, we had no burden
15 to call anybody. It's all the government's burden. The
16 government ran away from Irma. Not the defense.

17 And another option that your Honor could consider
18 about why the defense didn't call Irma is because the defense
19 is pretty comfortable that we didn't need to call Irma because
20 they didn't prove the case.

21 Now, in terms of the hearing. There's three points I
22 want to make about Nadija's testimony. The first is her --
23 it's the story about that morning of November 5. Because her
24 story on day one was different than her story on day two, after
25 she got home, spends overnight with her daughter.

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Summation - Ms. Glavin

1 I think, your Honor, it is pretty clear that the
2 government had never gone through with Nadija in any detail the
3 specifics of what happened. Who was standing where? What part
4 of the apartment? She was totally and utterly unprepared on
5 cross-examination for that. And so she began flailing about on
6 day one as to where things were, which is why we had to lock
7 her down in Defendant's Exhibit 33A as to what she saw and
8 where people were standing when she opened the door to that
9 bedroom. And she wrote down on 33A one thing. Where the dog
10 was, where Michael was, where Irma was. And her handwriting is
11 unmistakable that it was right there, right in front of her.
12 And then she went home.

13 Damn. Now I know why Ms. Glavin was going through all
14 that. This doesn't make sense. She came back that night.
15 Goes to show how far that mother would go. She took two photos
16 and she drew her own floor plan which I submit to you is not an
17 accurate floor plan but she drew a floor plan to make it
18 consistent with the testimony she knew she had already given
19 and was locked in.

20 Donna Materasso had never seen that floor plan before
21 and I don't think she knew who drafted it except there was some
22 foreign language on it. This is Court Exhibit D. She said no,
23 this is not -- this is too short. This is not how this is
24 shaped.

25 She comes back next day. She takes the photos. And

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Summation - Ms. Glavin

1 the devil, your Honor, is in the details. It's always in the
2 details when you're lying, which is why we went into incredible
3 detail.

4 She lied -- the whole event never happened. This is a
5 woman who testifies that Michael was too embarrassed to come
6 back to the apartment. Remember, there was this fight when
7 Nadija got there. And Michael wasn't at the apartment. And
8 Irma's: Go away Michael, go away Michael. And puts all this
9 stuff up against the door so he can't get in. And then Irma
10 says to her mother Michael's embarrassed about coming back.

11 He's embarrassed about coming back but he's not
12 embarrassed about tying her up naked in the morning next to his
13 mother-in-law's room?

14 This is a guy who is embarrassed enough such that he's
15 changing his clothes in the bathroom when his mother-in-law is
16 there in the morning, early on before he goes to work, whereas
17 normally he goes out into the living room, has his work clothes
18 there and he changes right there. This guy wasn't going to do
19 that in front of Nadija, the woman whom he had paid for the
20 plane ticket for her to come there. No way.

21 So what we then see, the devil in the details.
22 Remember on day one of her testimony Nadija said, I kept asking
23 her, pushing her: Well what did the table look like? It had a
24 tablecloth on it.

25 There was no tablecloth on that table the last time

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Summation - Ms. Glavin

1 Michael Materasso was in that apartment, which was in November
2 of 2014. He hasn't been back to that apartment since at least
3 November 12, 2014 and there was no tablecloth on that table.

4 But she told you on day one there was a tablecloth
5 that day. Well, yeah, because she's living in that apartment
6 right now and she took the picture last night and there was a
7 new tablecloth.

8 The other thing that she didn't remember, she came
9 back on day two, was she can't see directly to the right. The
10 dining room -- where the set-up is for the dining chair, you
11 walk out of that bedroom. There is a hutch right there. It's
12 in the photographs that she took. You can't look from that
13 bedroom to where the dining area is and where the dining room
14 table is.

15 Then let's talk about the tying up and the specific
16 chair. That's one of the dining chairs. I'm guessing it's
17 probably one of the chairs that's in Court Exhibit C. But you
18 got -- I mean we all saw Irma Materasso, okay. You can take
19 judicial notice. You're just -- if you're going to tie her up
20 to a chair, okay. You're going to tie her up like this? Where
21 you could just stand up? This makes no sense. You're going to
22 tie her like this to do a body cavity search? No. I mean
23 it's -- Michael Materasso does a lot of things. He didn't do
24 that. And if he did that he would have done that a lot better.

25 The second issue, and the story just didn't make

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Summation - Ms. Glavin

1 sense, and I've got to say you know for Nadija Nezirovic, she
2 would do anything for her daughter. You could see that. In
3 those e-mails from the 17th, and the back and the forth.
4 There's a desperation there. She's also not being honest with
5 Donna Materasso. The part about Donna -- Irma sold everything
6 she had, including her TVs. The TVs are in the photo. I mean
7 come on. Come on, Nadija. She lied for her daughter.

8 And your Honor, you know, when Mr. Beaty said she'd
9 come in here and commit perjury. She doesn't even know what
10 this is. She thinks we're in some Child Protective Services
11 proceeding. Her daughter, with all the things her daughter has
12 done, her daughter has never spent a day in jail. She doesn't
13 think you can do anything, quite honestly. And I think that's
14 a fair inference. I think she thinks that her testimony here,
15 nothing bad can happen to her. She goes on her merry way.
16 She's been through a lot worse. She was through the Bosnian
17 War. But in her mind, this wasn't that big a deal. Taking the
18 oath here in the child protective -- she doesn't even know what
19 these guys do.

20 Added to this is -- I mean thank God the defense
21 subpoenaed Irma for all of her communications with her mother,
22 which were produced by Mr. Cecutti on Monday. If we hadn't
23 done that -- and it was a last minute call, but if we hadn't
24 done that she wouldn't have been exposed for the precise lie
25 that there is. Both she and her daughter. And it was an easy

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Summation - Ms. Glavin

1 one.

2 Why couldn't she just say it and it wouldn't have
3 mattered? If she had just said, yeah, she drafted it for me.
4 Nadija read it to me. I was fine with it. I sent it a long.
5 It wouldn't have been a big deal.

6 But they knew there was a problem with that. It's so
7 clear that she and her daughter were talking about that from
8 yesterday to today about what's going on.

9 We haven't talked about it, it's not part of the
10 record, but I would submit that the e-mail that was sent to us
11 this morning from Mr. Cecutti sort of proves the whole point.
12 They just -- Michael Materasso has got to live with the choices
13 he made and the family that he married into. And he accepts
14 responsibility for those choices. Because I've been scratching
15 my head as to how he got himself into all of this thing, and
16 who his wife is, and who his mother-in-law is. But I think
17 what you heard here today is -- the last few days. There was a
18 lot -- there was an incredible amount of truth. There was an
19 incredible amount of truth, and there was extreme unhappiness.
20 Irma is a drug user. So is Michael. Michael was using while
21 he was out. He admitted that. And for the government to say
22 he admitted what he couldn't deny, denied what he couldn't
23 admit. I love that phrase. I used to use it all the time when
24 I sat over there. The problem is he admitted things he could
25 have denied. That's how you knew he was telling the truth.

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Summation - Ms. Glavin

1 You would never have known in September he had used crystal
2 meth. He didn't have to tell you, as embarrassing as it was,
3 that he went to all these spas and was getting sexual acts
4 performed on him. Many times. And that's a crime. And it's a
5 crime to commit adultery in New York. That also subjects him
6 to a violation. He was happy to explain exactly what happened
7 with the chair that he kicked. And it's really interesting,
8 because the way Irma told everyone, they all believe he threw
9 it. No. He kicked it.

10 He had no problem telling the Court that he knows 50
11 ways to Sunday what works and what doesn't work to get -- to
12 pass a drug test. And he went through it. He's already talked
13 to Olivares about the sweat patch. Yeah, I used it, this is
14 how I did it. And there was one thing you can really believe
15 about Michael Materasso, he was telling you the truth when he
16 told you, no, it doesn't work. Stays in your body for five to
17 eight days. I've tried everything. He has. He knows he has.
18 If there's something he's an expert on, it's drugs, drug
19 testing, how to beat it. And when he tells you or he tells me:
20 No, it doesn't work, you can't dilute it. Doesn't work.
21 You're going to get caught. I've already tried that. I've
22 been there, done that.

23 The fact that Nadija Nezirovic walks out. She's there
24 for two or three weeks. The morning she's leaving, the morning
25 she's leaving is the morning Michael picks to tie his wife up

F1N9MATH

Summation - Ms. Glavin

1 naked in the living room? She's there on the 4th. Michael
2 freely admitted there was an argument on the 4th. He gave you
3 the specifics as to who slept where on the bed. He went to
4 work on the 4th. He took a drug test on the 4th. On the
5 5th he got up. 5:15ish. Sometimes hits snooze. Then 5:30.
6 Puts the body pillow next to Gia so she doesn't roll off the
7 bed. As he remembered it, when he went to bed on the 4th
8 Irma was still mad at him because he had been cheating on her,
9 even though he was denying it that night. As he remembered it,
10 she was sleeping outside the bedroom. When he woke up in the
11 morning, she was there. He didn't even know she had come into
12 the bed. He got up to do his job that it's a miracle he even
13 has a job given what's been going on for the last six years.

14 He gets up to go to work. Yeah, that morning he's
15 embarrassed because he knows Nadija knows. And what's going on
16 in the background, in terms of her motive to lie -- her motive
17 to lie isn't just because she hates Michael. She's not a fan
18 of his. And quite frankly if I were Nadija I wouldn't be a fan
19 of yours either. But anyway, it's bigger than that. Irma has
20 so much going on at that point and in those three weeks when
21 the mother-in-law is there. Irma -- the stress of what's going
22 on where she disappears for a few hours one day, where the
23 government knows and it's part of a judicial record here in the
24 Southern District of New York where she was on October 23.
25 There's a lot on her mind and she's desperate.

F1N9MATH

Summation - Ms. Glavin

1 And to find out now that her husband has been cheating
2 on her repeatedly. If he leaves her -- she's not a U.S.
3 citizen. What could happen with the FBI? What could happen
4 with Child Services? There's an open investigation.

5 Everything is very, very complicated. And it's not
6 easy. But if Michael is going out and getting it some place
7 else as opposed to being at home in a happy marriage, and it
8 might be that this time Michael leaves, because when is he's
9 home there, she's doing drugs and, as he put it, he did it too.
10 And it's a cycle. He's going to end up right back here.

11 She got furious. She couldn't take it anymore. She's
12 told everybody under the sun a hundred different stories about
13 Michael. Her mother believes all of it. And it ends up in
14 e-mails that she blindly sends.

15 There is no other reason -- I mean it was like -- I
16 got to tell you, you did a much better job on cross than I did
17 because it was painful, and I realized your method was more
18 effective than mine, to do it calmer, because it was painful to
19 watch her try to explain why it is her daughter sent her that
20 e-mail. And she was not going to go down, Judge. She was
21 going to lie to the death. And she didn't think that there was
22 a consequence in this courtroom, because we're just Child
23 Protective Services here, and we can't do anything. We can't
24 even take kids away. Which I want to add to that, this woman
25 is a social worker for 20 years and she doesn't think Child

F1N9MATH

Summation - Ms. Glavin

1 Protective Services can take kids away? And just the fact that
2 Irma is hysterical throughout the month of December, and is
3 repeatedly and obsessively e-mailing Donna Materasso about all
4 of her fears. And somehow Nadija isn't told? Oh I'm afraid
5 Child Protective Services may take the kids away.

6 So, you walk out. You see your daughter tied up naked
7 by your son-in-law. You don't say anything. She doesn't say
8 anything. You go back into your room. You sleep for half an
9 hour. Then a little while later you get up. You make some
10 coffee. Then you wait for your daughter to come out. I think
11 she said it was about an hour-and-a-half before she spoke to
12 her daughter, the shrinking violet. And then take Jack the Pit
13 Bull, who has been very quiet and dutiful throughout this whole
14 horrible incident, to the groomer so he's ready to go to
15 Holland. It's not there.

16 I want to talk a little bit about Michael's testimony
17 and I want to talk a little bit about what I know Michael was
18 like from this Court.

19 As you can probably guess from all the activity in the
20 motion papers, and then the back and forth of whose been in and
21 out of this courtroom the last month. This has been a pretty
22 horrible month for everybody involved. Both families. Michael
23 taking the stand was actually never a doubt. And he knew that
24 he was going to be in a lot more trouble if he just didn't give
25 up and give you the whole truth. He also knew that admitting

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Summation - Ms. Glavin

1 drug use could get him into more trouble with you. Very
2 embarrassed. Didn't want to admit about the massage parts.
3 And your Honor pushed him on it. Well, what else did you get?
4 Well, I got other stuff. And then he told you.

5 It's important to him that nobody ever think for five
6 seconds that he laid a hand on his wife in anger. Because he
7 never did. And he will admit what he did. And he, believe me,
8 he has admitted things that he didn't have to. And he did it
9 because it's the truth.

10 I think if you just compare how he answered questions
11 and even how his mom answered questions, compare that to the
12 way Nadija and Irma answered questions. Because I would submit
13 to you that Irma and Nadija answered questions the way criminal
14 defendants or cooperators answer questions. Michael and Donna
15 answered questions that you asked them. Weren't going off and
16 giving you speeches. You asked me a yes or no. You got a yes
17 or no.

18 What Michael said on the stand does expose him -- it
19 actually exposes him to criminal liability. But I just think
20 it speaks volumes. He has asked me. He would like your
21 verdict today and he'd like to be sentenced today. I told him
22 it's unlikely, but I would mention it.

23 This has been -- he's been for two months,
24 two-and-a-half months. He didn't do this. He'll tell you all
25 the things he did do. But he's not going to get up here and

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Summation - Ms. Glavin

1 lie to you and say something that he didn't do. We don't think
2 the government met it by a preponderance. The sheer number of
3 exhibits the defense had to put in, I think we put in more
4 evidence than the government. We don't think they've met it
5 and we're asking you to find him not guilty on specifications
6 one to three.

7 THE COURT: Before we hear from the government on
8 rebuttal, just with reference to the last point. I'm not going
9 to render a verdict today because I think I need to carefully
10 review the evidence and including the arguments of counsel.
11 But Mr. Materasso, is quite right, given that he is in limbo
12 awaiting a sentence on the earlier -- the other specification
13 that he's admitted to, he's entitled to a prompt sentence. So
14 I will give you my verdict no later than a week from today.
15 And we will then set a prompt sentencing date after you've
16 received the verdict through a telephone conference call to set
17 that date. So it may be that I will give you a bottomline to
18 be followed by a fuller opinion. But for sure you will at
19 least get the bottomline by a week from today.

20 Let me hear from the government on rebuttal.

21 MR. BEATY: Your Honor, a lot of what Ms. Glavin said
22 focused on what Irma had said and done. That's not in
23 evidence. The letter that she sent to the Court is not in
24 evidence. Irma wasn't here. Prior inconsistent statements
25 that she may or may not have made are not relevant. The only

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Summation - Mr. Beaty

1 evidence that matters is whether Ms. Nezirovic is lying. And
2 the only evidence that the defense has put forward to suggest
3 that she is lying is this e-mail and this layout, the floor
4 plan issue at the apartment.

5 With the e-mail there is no evidence that that's a lie
6 at all. Her story was consistent. She said the first day that
7 her son had helped her write it. That was corroborated by
8 Irma's testimony. It was corroborated by the e-mail that
9 Mr. Cecutti sent that Ms. Glavin referred to.

10 Her explanation has been consistent and importantly
11 there is no reason for her to lie about that e-mail. The
12 e-mail itself is unimportant. There are no accusations in it.
13 It's just a plea to Donna Materasso to help her daughter out
14 financially. No reason for her to lie.

15 With respect to the layout, she explained from the
16 beginning, she said she wasn't very good with maps. She
17 expressed confusion about what represented the door on the
18 layout or on the floor plan. And, again, it's not -- there is
19 no serious dispute that she's been at the apartment and that
20 she knows where the dining room table, in fact, is.

21 With respect to this story that the defense thinks
22 that Ms. Nezirovic made up. If she made this up, she could
23 have done a lot better. She knows that Irma's not a shrinking
24 violet. So she could have made up a story about how Irma
25 reacted, about how she was screaming, about how she had to

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Summation - Mr. Beaty

1 comfort her all day. If Irma and Ms. Nezirovic were in the
2 apartment alone together later that morning, she could have
3 said anything. But what she told you was she had coffee. They
4 took the dog to the groomer. Those things suggest that she's
5 telling the truth, not that she made it up.

6 Finally, the defendant's testimony. He has denied and
7 denied everything until he had literally no choice but to admit
8 it. He admitted that he went to these massage parlors because
9 that went to the defense theory that Irma was upset about
10 adultery. But he -- when he was asked about threats, he said
11 that the only time that he had ever threatened Irma, that is
12 threatened to kill Irma and make it look like an accident was
13 one time in a series of text messages that he knew the
14 government had because it had been put into evidence against
15 him before. Other than that, had never threatened Irma.

16 On the stand he did lie about his drug use. About his
17 cocaine use again, and again until he was confronted with
18 proof.

19 Finally, the defense has raised the issue about
20 consent, suggested that even if Ms. Nezirovic's testimony is
21 true, maybe Irma had consented to being tied up. There is no
22 evidence of that at all. You know that the defendant has
23 threatened her in the past. There is evidence that she was
24 afraid of him. She was blockading him out of the apartment.
25 You know they had a fight, many arguments over the course of

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Summation - Mr. Beaty

1 Ms. Nezirovic's visit. And they had a fight either the night
2 before or several days before. And under those circumstances
3 it doesn't make sense that she would consent to be tied up
4 naked.

5 Importantly, she went to a domestic violence shelter
6 after this incident. That's not the behavior of someone who
7 has consented to being tied up naked.

8 Your Honor, I submit that the government has proven
9 its case by a preponderance of the evidence. Thank you.

10 THE COURT: All right. Well I thank both counsel for
11 excellent arguments and indeed for very excellent presentations
12 throughout this quite interesting hearing.

13 I'm going to ask counsel before you leave this
14 courtroom today to collect the originals of the exhibits, one
15 of each, including the court exhibits and give them to my law
16 clerk or my courtroom deputy so we will keep them while I'm
17 working on the decision and then give them back to respective
18 counsel. We will give them back we'll ask the government to
19 hold the court exhibits as well.

20 In terms of the transcript I take it no one was
21 ordering daily copy or were you?

22 MR. BEATY: We were.

23 THE COURT: So then I should be able to get the
24 transcript. It should be here somewhere. I'll get it from the
25 court reporter.

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Summation - Mr. Beaty

1 All right. Anything else we need to take up now?

2 MS. GLAVIN: There's one housekeeping matter, your
3 Honor.

4 Over the course of two days we were discussing
5 Defendant's Exhibit 65. The first day that we were discussing
6 Defendant's Exhibit 65 was a copy that my firm had done and
7 there was a line on it.

8 THE COURT: You've explained that.

9 MS. GLAVIN: Then the second day.

10 So I think -- the one without the line on it should be
11 65A just so the record is clear.

12 THE COURT: That's fine.

13 No one chose to offer -- I was a little surprised, the
14 e-mail letter that we got from Mr. Cecutti last night. But I'm
15 willing to -- if both sides want, I'm willing to include that
16 in the evidence. If either side objects I won't include it in
17 the evidence.

18 MS. GLAVIN: No, your Honor. We would ask that it be
19 included as part of the record.

20 MR. BEATY: We have no objection.

21 THE COURT: So we'll mark that as Court Exhibit E and
22 why don't you mark one of the copies you have when you give --
23 I want you to give my law clerk a complete set so she has in
24 one place a complete set of all of the exhibits and work with
25 counsel for the defense to do that rather than our trying to

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Summation - Mr. Beaty

1 put together what we've got in bits and pieces. Very good.

2 Thanks so much.

3 (Adjourned)

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